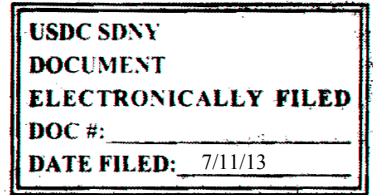


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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:
ORLANDO DONES FIGUEROA, :
Plaintiff, :
:
-against- :
:
COMMISSIONER OF SOCIAL SECURITY, :
Defendant. :
:
-----X

12 Civ. 07129 (LGS)

MEMORANDUM
AND ORDER

LORNA G. SCHOFIELD, District Judge:

Before the Court is the Report and Recommendation of Magistrate Judge Netburn (Dkt. No. 24) (“Report”), recommending that the Court grant Defendant’s Motion to Dismiss for Lack of Jurisdiction pursuant to Federal Rule of Civil Procedure Rule 12(b)(1) (Dkt. No. 16) (“Motion”).

Plaintiff filed the Complaint in this action on September 20, 2012 (Dkt. No. 2), seeking judicial review of a favorable decision of the Commissioner of Social Security awarding him Supplemental Security Income benefits under Title XVI of the Social Security Act, 42 U.S.C. § 405(g). The case was referred to Magistrate Judge Netburn on October 12, 2012. (Dkt. No. 8). On March 12, 2013, Defendant filed the present Motion, requesting that the Court dismiss the Complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim upon which relief may be granted. On June 14, 2013, Judge Netburn issued the Report, recommending that the Court grant the Motion to Dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). The district court “may adopt those portions of the report to

which no ‘specific, written objection’ is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law.” *Adams v. New York State Dep’t of Educ.*, 855 F. Supp. 2d 205, 206 (S.D.N.Y. 2012) (citing Fed. R. Civ. P. 72(b); *Thomas v. Arn*, 474 U.S. 140, 149 (1985)).

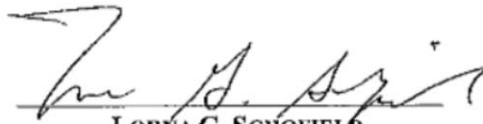
Having reviewed the Report, to which no objection was made, the Court finds no clear error on the face of the record. Accordingly, the Court ADOPTS the Report in its entirety as the decision of the Court. Defendant’s Motion to Dismiss (Dkt. No. 16) is GRANTED, and this case is DISMISSED pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

The Court further finds, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk is directed to mail a copy of this Order to the pro se Plaintiff and close this case.

SO ORDERED.

Dated: July 11, 2013
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE